

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SANTIAGO CRUZ,
Plaintiff,
v.
BETANCOURT,
Defendant.

Case No. [16-cv-00152-KAW](#) (PR)

ORDER OF SERVICE

Plaintiff Santiago Cruz, a state prisoner incarcerated at the California Training Facility (“CTF”) in Soledad, has filed a *pro se* civil rights action pursuant to 42 U.S.C. § 1983, alleging the violation of his constitutional rights by Correctional Officer C. Betancourt, an employee at CTF-Soledad. Plaintiff has consented to the jurisdiction of the undersigned United States Magistrate Judge over this action. Plaintiff has filed a motion for leave to proceed *in forma pauperis* (“IFP”), which is granted in a separate order. The Court now addresses the claims asserted in Plaintiff’s complaint.

DISCUSSION

I. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *Id.* § 1915A(b)(1), (2). *Pro se* pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that

1 the alleged violation was committed by a person acting under the color of state law. *West v.*
2 *Atkins*, 487 U.S. 42, 48 (1988).

3 Liability may be imposed on an individual defendant under 42 U.S.C. § 1983 if the
4 plaintiff can show that the defendant's actions both actually and proximately caused the
5 deprivation of a federally protected right. *Lemire v. California Dep't of Corrections &*
6 *Rehabilitation*, 726 F.3d 1062, 1074 (9th Cir. 2013); *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir.
7 1988); *Harris v. City of Roseburg*, 664 F.2d 1121, 1125 (9th Cir. 1981). A person deprives
8 another of a constitutional right within the meaning of § 1983 if he does an affirmative act,
9 participates in another's affirmative act or omits to perform an act which he is legally required to
10 do, that causes the deprivation of which the plaintiff complains. *Leer*, 844 F.2d at 633.

11 **II. Plaintiff's Claims**

12 In his complaint, Plaintiff alleges the following:

13 Plaintiff recently had surgery for removal of a brain tumor. As a result, he suffers from
14 mood swings, verbal outbursts and loss of memory and cognition. Officer Betancourt had full
15 knowledge of Plaintiff's medical issues. However, on May 5, 2014, Betancourt, who is
16 responsible for maintaining security in the dayroom, orchestrated an attack upon Plaintiff by
17 failing to supervise the dayroom and, thus, allowed an inmate to attack Plaintiff. This inmate
18 punched Plaintiff several times in the head and face and slammed him head first on the cement
19 floor. While Plaintiff was on the floor, the inmate drove his knee into Plaintiff's ribs. As a result,
20 Plaintiff suffered four broken ribs.

21 Plaintiff alleges that Betancourt undertook this action in retaliation for Plaintiff filing
22 grievances against prison employees. Plaintiff also alleges that Betancourt retaliates against him
23 by unreasonably searching his cell, improperly confiscating numerous items from his cell and
24 threatening him with more of the same.

25 Liberally construed, these allegations appear to state a cognizable First Amendment
26 retaliation claim and a cognizable Eighth Amendment deliberate indifference to safety claim
27 against Betancourt.

28

1 **CONCLUSION**

2 Based on the foregoing, the Court issues the following Orders:

3 1. Plaintiff states a cognizable First Amendment retaliation claim and an Eighth
4 Amendment deliberate indifference to safety claim against Officer Betancourt.

5 2. The Clerk of the Court shall mail a Notice of Lawsuit and Request for Waiver of
6 Service of Summons, two copies of the Waiver of Service of Summons, a copy of the complaint
7 (docket no. 1) and all attachments thereto, a copy of this Order, and a copy of the form “Consent
8 or Declination to Magistrate Judge Jurisdiction” to Officer C. Betancourt at CTF-Soledad. This
9 form can also be found at www.cand.uscourts.gov/civilforms. The Clerk shall also mail a copy of
10 the complaint and a copy of this Order to the State Attorney General’s Office in San Francisco,
11 and a copy of this Order to Plaintiff.

12 3. Defendant is cautioned that Rule 4 of the Federal Rules of Civil Procedure requires him
13 to cooperate in saving unnecessary costs of service of the summons and complaint. Pursuant to
14 Rule 4, if Defendant, after being notified of this action and asked by the Court, on behalf of
15 Plaintiff, to waive service of the summons, fails to do so, he will be required to bear the cost of
16 such service unless good cause be shown for his failure to sign and return the waiver forms. If
17 service is waived, this action will proceed as if Defendant had been served on the date that the
18 waiver is filed, except that pursuant to Rule 12(a)(1)(A)(ii), Defendant will not be required to
19 serve and file an answer before sixty days from the date on which the request for waiver was sent.
20 (This allows a longer time to respond than would be required if formal service of summons is
21 necessary.)

22 Defendant is advised to read the statement set forth at the foot of the waiver form that more
23 completely describes the duties of the parties with regard to waiver of service of the summons. If
24 service is waived after the date provided in the Notice but before Defendant has been personally
25 served, the answer shall be due sixty days from the date on which the request for waiver was sent
26 or twenty days from the date the waiver form is filed, whichever is later.

27 4. Defendant shall file his Consent or Declination to Magistrate Judge Jurisdiction on or
28 before the date his answer is due.

1 5. The following briefing schedule shall govern dispositive motions in this action:

2 a. No later than thirty days from the date his answer is due, Defendant shall file a
3 motion for summary judgment or other dispositive motion. If Defendant files a motion for
4 summary judgment, it shall be supported by adequate factual documentation and shall conform in
5 all respects to Federal Rule of Civil Procedure 56. If Defendant is of the opinion that this case
6 cannot be resolved by summary judgment, he shall so inform the Court prior to the date the
7 summary judgment motion is due. All papers filed with the Court shall be promptly served on
8 Plaintiff.

9 At the time of filing the motion for summary judgment or other dispositive motion,
10 Defendant shall comply with the Ninth Circuit's decision in *Woods v. Carey*, 684 F.3d 934 (9th
11 Cir. 2012), and provide Plaintiff with notice of what is required of him to oppose a summary
12 judgment motion. If the motion is based on non-exhaustion of administrative remedies,
13 Defendants must comply with the notice and procedural requirements in *Albino v. Baca*, 747 F.3d
14 1162 (9th Cir. 2014). *See Stratton v. Buck*, 697 F.3d 1004, 1008 (9th Cir. 2012).

15 b. Plaintiff's opposition to the motion for summary judgment or other dispositive
16 motion shall be filed with the Court and served on Defendant no later than twenty-eight days after
17 the date on which Defendant's motion is filed. The Ninth Circuit has held that the following notice
18 should be given to *pro se* plaintiffs facing a summary judgment motion:

19 The defendants have made a motion for summary judgment by which they seek to have
20 your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules
21 of Civil Procedure will, if granted, end your case.

22 Rule 56 tells you what you must do in order to oppose a motion for summary judgment.
23 Generally, summary judgment must be granted when there is no genuine issue of material
24 fact -- that is, if there is no real dispute about any fact that would affect the result of your
25 case, the party who asked for summary judgment is entitled to judgment as a matter of law,
26 which will end your case. When a party you are suing makes a motion for summary
27 judgment that is properly supported by declarations (or other sworn testimony), you cannot
28 simply rely on what your complaint says. Instead, you must set out specific facts in
29 declarations, depositions, answers to interrogatories, or authenticated documents, as
30 provided in Rule 56(e), that contradict the facts shown in the defendant's declarations and
31 documents and show that there is a genuine issue of material fact for trial. If you do not
32 submit your own evidence in opposition, summary judgment, if appropriate, may be
33 entered against you. If summary judgment is granted [in favor of the defendants], your
34 case will be dismissed and there will be no trial.

1 *Rand v. Rowland*, 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc).

2 Before filing his opposition, Plaintiff is advised to read the notice that will be provided to
3 him by Defendant when the motion is filed, and Rule 56 of the Federal Rules of Civil Procedure
4 and *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) (party opposing summary judgment must come
5 forward with evidence showing triable issues of material fact on every essential element of his
6 claim). Plaintiff is cautioned that because he bears the burden of proving his allegations in this
7 case, he must be prepared to produce evidence in support of those allegations when he files his
8 opposition to Defendant's summary judgment motion. Such evidence may include sworn
9 declarations from himself and other witnesses to the incident, copies of documents authenticated
10 by sworn declaration or discovery. Plaintiff will not be able to avoid summary judgment simply
11 by repeating the allegations of his complaint.

12 The same evidentiary requirement applies if the defendants file a motion for summary
13 judgment for failure to exhaust administrative remedies. To oppose this motion, Plaintiff must
14 present any evidence he may have which tends to show that he did exhaust administrative
15 remedies or was excused from doing so. Again, the evidence may be in the form of declarations,
16 that is statements of fact from himself or other witnesses signed under penalty of perjury, copies of
17 documents accompanied by a declaration showing where they came from and why they are
18 authentic, or discovery documents such as answers to interrogatories or depositions. In
19 considering a summary judgment motion for failure to exhaust administrative remedies, the Court
20 can decide disputed issues of fact with regard to this portion of the case. *See generally Albino*,
21 747 F.3d at 1172-73; *Stratton*, 697 F.3d at 1008.

22 c. Defendant shall file a reply brief no later than fourteen days after the date
23 Plaintiff's opposition is filed.

24 d. The motion shall be deemed submitted as of the date the reply brief is due. No
25 hearing will be held on the motion unless the Court so orders at a later date.

26 6. Discovery may be taken in this action in accordance with the Federal Rules of Civil
27 Procedure. No further court order pursuant to Rule 30(a)(2) or Local Rule 16 is required before
28 the parties may conduct discovery.

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7. All communications by Plaintiff with the Court must be served on Defendant, or Defendant’s counsel once counsel has been designated, by mailing a true copy of the document to Defendant or his counsel.

8. It is Plaintiff’s responsibility to prosecute this case. Plaintiff must keep the Court informed of any change of address by filing a separate paper with the clerk headed “Notice of Change of Address,” and must comply with the Court’s orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

9. Extensions of time are not favored, though reasonable extensions will be granted. Any motion for an extension of time must be filed no later than fourteen days prior to the deadline sought to be extended.

IT IS SO ORDERED.

Dated: April 13, 2016


KANDIS A. WESTMORE
United States Magistrate Judge